

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 22-CR-60079-RAR/Strauss

UNITED STATES OF AMERICA

vs.

XAVIER RIVERS,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION ON COMPETENCY


THIS CAUSE comes before the Court upon Magistrate Judge Jared M. Strauss’s Report and Recommendation regarding the competency of Defendant Xavier Rivers, [ECF No. 56] (“Report”), filed on November 16, 2023. The Court has fully reviewed the Report, Defendant’s Objections, [ECF No. 57] (“Objections”), and is otherwise fully advised.

A district court reviewing a magistrate judge’s report and recommendation “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1); *see also Macort v. Prem, Inc.*, 208 F. App’x 781, 783-84 (11th Cir. 2006). The district court “may accept, reject or modify, in whole or in part, the findings of the recommendations made by the magistrate judge.” *Id.*; *see also* FED. R. CRIM. P. 59(b)(3); *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985). “[I]n determining whether to accept, reject, or modify the magistrate’s report and recommendations, the district court has the duty to conduct a careful and complete review.” *Williams v. Wainwright*, 681 F.2d 732, 732 (11th Cir. 1982) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 408 (5th Cir. 1982)). Legal conclusions are subject to *de novo* review, even if no party specifically objects. *See U.S. v. Keel*, 164 F. App’x 958, 961 (11th Cir. 2006); *U.S. v. Warren*, 687 F.2d 347, 348 (11th Cir. 1982).

Mindful of the standard of review and having carefully examined the record—as well as specifically conducted a *de novo* review of the Report’s legal conclusions and portions of the Report addressed by Defendant’s Objections—the Court agrees with the Report’s findings as to the credibility of Dr. Katherine E. Sunder’s testimony. Namely, the Court finds that there is sufficient evidence and data in the record to support a finding of competency and there are no expert opinions to the contrary opining Defendant is not competent to proceed. Accordingly, it is

ORDERED AND ADJUDGED that Magistrate Judge Jared M. Strauss’s Report and Recommendation, [ECF No. 56], is hereby **AFFIRMED AND ADOPTED**. Defendant’s Objections, [ECF No. 57], are **OVERRULED**. The Court finds that Defendant Xavier Rivers is competent to stand trial and/or enter a plea of guilty in this matter.

DONE AND ORDERED in Miami, Florida, this 4th day of December, 2023.

A handwritten signature in black ink, appearing to read 'Rodolfo A. Ruiz II', is written over a horizontal line.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE

cc: counsel of record